EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

ORIGINAL PAGINATION IS NOT COUNTINUOUS.

91-1811

Supreme Court, U.S.
FILED
APR 10 1992
OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1991

IN RE: EARLENE POLYAK

PETITION FOR WRIT OF MANDAMUS
FROM THE SUPREME COURT OF THE UNITED STATES
TO THE UNITED STATES COURT OF APPEALS
AND THE UNITED STATES DISTRICT COURT
FOR THE SIXTH CIRCUIT

EARLENE POLYAK
3179 Middlefield Drive
Trenton, Michigan 48183
(313) 676-3364
and/or
4063 Hood Road
Palm Beach Gardens
Florida 33410
(407) 627-3564

QUESTIONS PRESENTED

1.Is the injunction issued against the filing of any further complaints regarding properties in Lawrence County, by the United States District Court, Columbia Division,Middle District of Tennessee, in violation of pro se basic constitutional right to possess, use, and dispose, and sanction sale of possessory interest in violation of federal protection of equal protection in due process clauses in the Fifth and Fourteenth Amendments?

2.Is Tennessee Statute (21-1-203) dispersing with personal service on non-resident in attachment on property by publication for four consective weeks(21-1-204(a)(e)) in violation of possessory interests provided in Tennessee Statute Partition in Kind 29-27-117, and the "taking clauses of the Fifth and fourteenth Amendments?

3. Is the sale of possessory interest at "Public Auction" without compensation and jury trial constitutional?

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
TABLE OF AUTHORITIES	ii
JURISDICTIONAL STATEMENT	1
OPINIONS BELOW	3
JURISDICTION	3
CONSTITUTIONAL PROVISIONS	4
STATEMENT OF THE CASE	6
CONCLUSION	28
CERTIFICATE OF SERVICE	28
NOTARY PUBLIC	28

TABLE OF AUTHORITIES

	Page
28 U.S.C. 144	18
T.C.A.Partition in Kind 29-27-117	5
Doctrine Res Judicata	27
Loretta Manhatten Corp. 458 U.S. 436 102 S Ct 3176	22
Seawall et al v New York City, 544 N.Y.S. 2d 542(Ct App.1989)	16

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1991

IN RE: EARLENE POLYAK

EARLENE POLYAK — Petitioner

v

THOMAS STACK AND
HENRY HENRY & STACK — Respondents

PETITION FOR WRIT OF MANDAMUS

Petitioner prays that a writ of mandamus issue from this Supreme Court to review the abuse of discression and conflict of interest in the discriminatory practices to the federally protected rights in Equal Employment opportunity in the above Courts pursuant to 28 U.S.C.1651(a).

This writ of mandamus is grounded in the denial of due process to federally protected Equal Employment Opportunity in discrimination and exclusion from filing complaints and demand for relief from damages on NEW EVIDENCE of loss of United States Burley Tobacco quota of one nine hundred forty-six(1,946) pounds in 1990,

and total loss on March 3, 1991 (App.C.p.49-56)

This writ is grounded in new legislation in Public Law 102-66 issued on March 21,1991 to strengthen the Civil rights Act of 1964, to provide relief in damages for intentional employment discrimination, and revise Statute 42 U.S.C.1981 inserting"(a)" before All persons within)...right in every state to make and enforce contracts to sue....

The United States Department of Agriculture alloted burley quota is provided civil right protection for equal employment against discrimination against sex race under Title VII,and Title VI of Civil Rights Act 1964, and Agriculture Act of 1938,sec 318.Title 18 Sec 1001 U.S. Criminal Code provides further protection.

The District Court denied filing No.1: 85-025 Earlene Polyak v ThomaS Stack and Henry Hery & Stack,on March 21,1991,Court of Appeals ordered filed Cases 91-8517/18/19, but consolidated 91-5655/5656/5657. Petitioner submits writ for 91-5657 Earlene Polyak v Thomas Stack&Henry Henry &Stackto issue for for negligence and Malfeasance

OPINIONS BELOW

The opinions of the United States District Court, Columbia Division, Middle District of Tennessee are set forth in Appendix A,and all other pertinent opinions are set forth in Appendix B, and C.

JURISDICTION

The order denying complaint and demand for jury trial for relief in damages in negligence and malfeasance on NEW EVIDENCE to discrimimination to federally protected rights fe federal alloted burley quota was denied rehearing on January 13, 1992, and this writ is timely within ninety days thereof.

The jurisdiction of this Court is invoked in Article III /sec. 2 , in which the judicial power of the Supreme court of the United States extends to all cases of law and equity; between citizens of different states; between state and citizens of another state.

This jurisdiction isinvoked in 42 U.S.C.

1981; 1982; 1983, 28 U.S.C. 1443(1)(2) and 5 U.S.C. 504 Equal Access to Justice, and Fifth,Seventh and fourteenth Amendments.

The constitutional and federal questions have been consitently raised in this case.

CONSTITUTIONAL PROVISIONS

The pertinent portions of the Fifth Amendment is as follows:

> No...person shall be deprived of life, liberty, or property without due process of law; nor shall private property be be taken for public use without just compensation.

Const. Amend. V

The pertinent portion of the Seventh Amendment is as follows:

> ...where the value of controversy shall exceed twenty dollars, the right of jury trial shall be preserved.

Const. Amend. VII.

The pertinent portion of the eight Amendment is as follows:

> ...nor excessiye fines imposed,nor cruel and unusual punishment inflicted.

Const. Amend. VIII.

The pertinent portion of the Fourteenth

is as follows:

> No state shall make or enforce any laws which shall abridge the priveleges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny any equal protection of the laws.

Const. Amend XIV.

42 U.S.C. Sec. 1981:

> All persons within the jurisdiction of the United States shall have the same right in every state to enforce contracts to sue..., to the full and equal benefit of all laws

42 U.S.C. Sec. 1982.

> ...to inherit, hold, purchase lease and convey real and personal property.

42 U.S.C. Sec. 1983:

> Every person...who under the color of any ...custom or usuage of any state...subject or cause to be subjected any citizen of the United States or other person within its jurisdiction...deprivation of rights and priveleges ...secured by the constitution and its laws. shall be liable to to the party injured in action at law in equity proceedings...

28 U.S.C. 1443:

> (1) Against any person who is denied or cannot enforce in the Courts of such state a law providing equal civil rights of citizens of the United States or

persons within its jurisdiction.

(2) For any act under color of authority deprived from a law providing for equal rights.

TENNESSEE STATUTE PARTITION IN KIND 29-27-117:

If the commissioners are satisfied that exact partition cannot be made without material injury to the parties or SOME ONE OF THEM, the commissioners, may make the partitions as nearly equal as they can and charge the larger shares the sums necessary to equalize all shares T.C.A. 1932

STATEMENT OF THE CASE

This is the third Notice of Appeal, to the United States District Court, Columbia Dividion Middle District of Tennessee, disregarded to this Supreme Court, and entered in the United States Court of Appeals, Sixth Circuit in the abuse of discretion in conflict of interest and failure to rescue by the Honorable Thomas A. Higgins, dismissals affirmed in docket control.

The District Court denies federal protection of equal protection Statute 29-27-117, in the denial of due process in right to posses, use and dispose of properties in Lawrence

County, Tennessee provided in the "taking clau-nen"with injunction against pro se filing com-laints regarding her properties in Lawrence Cou-nty for relief in damages by the Honorable Thomas A. Wiseman on November 13, 1985, No. 1:85 0116 Earlene Polyak v Jim Hamilton and the Cir-cuit court of Lawrence County, provided in the Fifth and Fourteenth Amendments(App.C p.41).

Judge Wiseman stated on April 30, 1986, "That order was entered because of Ms. Polyak's previous filings against various person's in this Court"

Appellant's properties have been sold with out compensation, notification of date of sale, time of sale, place of sale,and amount of pro-ceeds for sale, without entering order for sale for appeal and right of redemption and without appeal ever being heard in any Court(See order App. C p.42).

Neither Robert Boston's order on August 21, 1987, nor his father's William Boston, Boston Bates & Holt on October 19, 1983 awarded any

compensation for the restoration and maintnance of the house on this property as the result of settlement by agreement by cotenants in 1976.

Robert Loston's order for sale on August 21, 1967, in case 1974, Frank Hulen and Wilma Lesnansky v Earlene Polyak, was immediately removed forn Chancery Court with Complaint and Counter-clain for Jury Trial No. 1:87-0075(1:84-0082 & 1:84-0083), but remanded by Judge Higgins on September 29, 1987

This remand was immediately appealed to this Supreme court,and filed in Suprme Court, but district Clerk issued second order on October 5, 1987, and entered appeal with cover letter to Court of Appeals(App.C p.42).

This Case was appealed to this Supreme Court on February 16, 1990, but the District Clerk entered appeal in the Court of Appeals for the Sixth Circuit, and all motions to correct appeal to the District Court and Court of Appeals disregard entering this appeal properly in this Supreme Court(App. A p. 4,

(App. A p.2, Restraining Order App. A 9).

Appellant learned of this"unconstitutional sale by chance conservation in Lawrenceburg on April 1, 1988. The party reading notice of sale in local Advocate places advertisement in November 1987, and Affidavit was entered in the District Court on June 22, 1988(App. A.p.24,25)

Although Appellant tried to bring the sale of this property to Judge Higgins attention in partial hearing in District Court, Nashville, Tennessee on May 31-June 3, 1988, Judge biased when questioning of all witnesses on subpoena.

Judge displayed bias in the Court when Thomas Stack and his lawyer were asked to stand and introduced them as lawyers to the jury on May 31, 1988.Appellant later overheard Judge Higgins state"I am a Lawyer, I think in terms of one third"in conservation with local lawyer (See Affidavit App. Cp. 50).

After four partial days of hearings beween sentencing, naturalization, and delay for attorney to close sale on property, Judge

Higgins issued directed verdict in hearing for negligence, in failure to prove malpractice without the Defendants ever taking witness stand and without allowing case to go to jury.

The notice of appeal to the Supreme Court entered in Court of Appeals 88-5763/5794, Juris dictional statement denied on lack of jurisdiction 89-365 Petition for rehearing certiorari denied January 8, 1990(App. A.p.B p.29).

Companion case for negligence, Earlene Polyak v William Boston, and Boston Bates & Holt, Judge Higgins denied motion to Rescue, and Motion For Continuance and to Transfer to Florida and dismissed case on September 18 1989 No. 1:86-0036(App. C.p. 52).

Appellant obligated to reside in Florida during cold months due to heart failure and resulting complications on physicians recommendations.

Case No. 1:86-0036(89-6414/90-5015 pending in the Sixth Circut(App. C.p.52).

All complaints against the "unconstitutional"seizure of properties for sale at

Public Auction have been dismissed in the District Court, and Judge Higgins has dismissed all complaints to set aside final order to reopen and reinstate cases for relief in jury trial on NEW EVIDENCE OF SALE(App.25,26)

Complaint to reopen for relief in jury trial for damages was dismissed and dismissal affirmed in the Court of Appeals in 89-5648 (D.C. 1:84-0082) cons. for appeal 89-5650(1:84 0083); 89-5649(1:85-0116): 89-5694 Earlene Polyak v Wilma Lesnansky for seizure of properties and United States Department of Agriculture Burley Tobacco Allotment; 89-5320, Earlene Polyak v Buford Evans & sons for "wrongful lawsuit". These cases are on Writ of Certiorari to this Supreme Court No. 89-365

The above cases all arise out of Chancery 1974 Frank Hulen and Wilma Lesnansky v Earlene Polyak.Attorney for the family since settlement by agreement initiated by Cotenants in 1976, William boston Boston Bates & Holt divided loyalties in violation of Professional Rules

Tennessee Supreme Court, and sued for sale for benefit at Public Auction. Properties have been transferred at Private Auction(App.C p.42).

Buford Evans & Sons enteredupon Appellant's property and conducted invalid survey without notification Buford Evans & Sons allege that the hand-drawn map to show equal division for Thomas Stack Henry Henry & Stack, but this map in Tract #3 correlates with Item #2, in order by William Boston, Boston Bates & Holt in division because property could not be divided equally.Mr Evans alleges that he gave this map to defense Thomas Stack (App. C p.49).

Thomas Stack did not enter evaluation of property, bills for restoration,Memorandum Brief nor provide a transcript of the proceedings.

On October 19, 1983, Thomas Stack signed order over without compensation over Appellant's objections to Jim Hamilton,Judge signed, and William Boston signed order(App. C p.46).

Thomas Stack brought case back to Circuit Court,after as a result of Negligence to act,

Appellant entered timely and proper appeal on November 14, 1983 Tennessee Court of Appeals.

As a result of this alleged hearing to amend or alter order for compensation on December 19, 1983, and furter negligence in enter- bills for restoration of house on her agreed partition for a retirement home, Appellant obligated to try to defend her right to posses use and dispose of her properties.

On December 20, 1983, Boston Bates & Holt entered UNAPPEALABLE JUDMENT for hearing, and pro se appeal dismissed in Tennessee Court of Appeals on April 26, 1983.And she has not been notified of final order in 1974(App. C.p.41).

Appellant specifically entered complaints to unconstitutional seizure and sale of properties to avoid bias and prejudice in Columbia in U.S. District Court in Nashville, but complaints entered iN U.S. Columbia Division. She has consistently moved for Judge Higgins to rescue pursuant since 1986, pursuant to 28 USC 144 Federal Rules of Civil Procedure.

1. THE INJUNCTION ISSUED AGAINST FILING FUTHER COMPLAINTS REGARDING PROPERTIES DENIES DUE PROCESS AND DEPRIVATION OF CONSTITUTIONAL RIGHT TO POSSES USE AND DISPOSE IN FIFTH FOURTEENTH AMENDMENTS AND 42 U.S.C 1981, 1982 and 1983.

This appeal is to the injunction against filing further complaints regarding property issued by the Honorable Thomas A. wiseman on November 13, 1985. This injunction is appealed on the grounds that it is in violation of the Appellant's basic constitutional right to posses use and dispose in allowing seizure of property for "unconstitutional sale"of possessory interest without any compensation "Public Auction.

This injunction denies federal protection of equal protection of due process and the deprivation of civil and constitutional laws rights provided in the Fifth and Fourteenth Amendments.

This injunction in addition to civil and constitutional rights of possessory interest denies right under 42 U.S.C. right to sue to the full extent of the law Sec. 1981, right to

inherit hold and convey, and allows for deprivation of rights and priveleges and liability in action at law in equity or other proper proceeding pursuant to Sec. 1983.

On April 30,1986, Judge Wiseman revealed the abuse of discretion in upholding the civil and constitutional laws and property right of possessed interest in conflict with bias for the unconstitutional seizure of Appellant's properties for sale at "public Auction" and prejudice in letter to John P. Hehman, United States court of Appeals, Sixth circuit,"That order was entered because of Mrs. Polyak's previous filing against various persons in this Court...and she should be severly sanctioned therefor.," affirmed in docket control

The Honorable Thomas A. Higgins cites this injucntion, and denies filing complaint to set aside final order from the Supreme Court (89-365) Court of Appeals(87-5717/5793/5747(1: 85-0125 Earlene Polyak v Thomas Stack And Henry Henry & Stack.

The Court disregards that seizure of property for "unconstitutuional sale" without any compensation is suported by Supreme Court allowing to stand New York Court of Appeals ruling that New York City's SRO housing(Local law No. 9) unconstitutionally confiscates private property, and has the effect of seizing property without just compensation on November 27, 1989 No. 89-388.

This ruling by the New York Court of Appeals is grounded in the individual's basic right of possessed interest. This case suports Appellant's complaints of the basic right of possession use and dispose in possessory interest in that the Supreme upholds the right to Just compensation,wheras Appellant's properties sold without any compensation for possed interests and restoration and investment in house for a retirement home.

these basic rights of possessed interest are set forth in Seawall et al., v New York City.,544 N.Y.S. 2d 542(Ct.App. 1989. the news

paper articel is recent Supreme Court action recignization of that evidence of actual benefit to unconstitutionally seize the investment and bascic constitutional rights of the property owner.

Judge Higgins continues to use injunction in one way or other to deny filing of complaint for relief for damages in Appellant's irreparable loss of right interest in properties with-otu ANY COMPENSATION. Judge has just denied filing 89-5496 unconstitutional seizure of property and U.S. Department of Agrilture burley tobacco allotment, 89-5320 "Wrongful lawsuit (Thomas Stack divided loyalties and negligent of State statute) 1:85-0120, 1:84-0082(89-5468 1:84-0082(89-5450); 1-0084-0116(89-5469), and denials of filing affirmed in the Court of Appeals with additional properties loss to Appellant for complaint against seizure of properties in this unconstitutional sanction.

Appellant moved for Judge Higgins to disqualify due to bias from all of her cases on

September 18, 1986, and this motion to reconsider denial still pending. On May 31, 1988, after first day of this partial hearing, Judge asked Thomas Stack and Bruce Peden to stand and introduced them as lawyers to jury in open Court. Judge Higgins refused verbal motion to rescue.

Later on same day, Judge Higgins stated,"I am a lawyer,I think in terms of one-third in answer to advice from lawyer. On September 15, 1989, Judge Higgins denied motion to rescue in companion case for negligence 1:86-0036, pursuant to 28 U.S.C. 144:

> Whenever a party at any proceeding in a district court makes and files a timely affidavit that a judge before a matter is pending has a personal bias against him or in favor of a party, Judge shall proceed no further, but another Judge shall be assigned to hearproceeding.

Appellant has appealed this injunction against the denial of due process and deprivaof civil and constitutional laws and property rights, which are affirmed in docket control in the Court of Appeals for the Sixth Circuit

2. THE INJUNCTION ISSUED BY THE DISTRICT COURT DENIES DUE PROCESS OF NOTIFICATION OF SALE OF POSSESSORY INTERESTS IN LOCAL ADVERTISEMENT AGAINST STATE STATUTE THE FIFTH AND FOURTEENTH AMENDMENTS AND UNCONSTITUTIONAL

The injunction issued against further filing of complaints regarding properties in Lawrence County,denies notification of sale of possessory interests of due process in local advertising,in denial of federal protection of equal protection in the "taking clauses" provided in the fifth and Fourteenth Amendments and provided in State Statute 29-27-117 and sale is unconstitutional.

This property was sold without notification of time of sale, without notification of date of sale, without notification of place of sale,with out notification of amount of proceeds and with-without entering order for appeal or redemption.

Appellant learned about advertised sale by chance conservation in Lawrenceburg on April 1, 1988, after advertised in November, 1987.

Notice by mail or other means as certain to insure actual notice is a minmun constitu-

> tutional pre condition to a proceeding which will adversly affect the liberty or property interwsrs of any party whether unlettered or well versed. New York cCity v New York,N.H. & R.Co 344 U.S. 344 at 297 73 S Ct at 301.

The Chancery Court of Tennessee allowed dispensing of personal service with service made publication where the defendant is nonresident of the state(6)hen attachment will lie against Defendant's property(21-1-203, Publication must be in newspaper disignated by the Courtfor four consective weeks (21-1-204(a)(e).

Appellant was served Robert boston's order for sale of "interest therein" on August 21, 1987, but removed complaint and Counter-claim for relief from damages in jury trial Jury triall:87-0075(1:84-0082 & 1:84-0083).

Appellant served motion of continuance in pending pretri conference on October 28, 1987, with physicians statements and affidavit before entering Cardiac Uniet for multi-by-pass surgery on Ocotber 20-30, and it appears property sold while recovering from illness while in florida without notification.

The sale of possessory interest without notificationviolates Tennessee Statute 29-27-117, and violates equal federal protection of the statute to the nonresident.

The sale possessory interestwithout notification and without any compensation at Public Auction violates federal protection of the Fifth Amendment.

This sale of private property without notification by advertising (21-1-203, 21-1-204(d)(e)violates the due process "taking clauses" provided in the Fifth and Fourteenth Amendment

This sale of private property by advertising renders state law uncostitutional and in violation of the "taking cluases of the Fifth and Fourteenth Amendments.

The sale of ths possessory interest with ou compensation and without jury trial is in violation of the Seventh Amendment.

This seizure of private property in in Tennessee correlates in advertising law and Local Law and it is unconstitutional.

3. THIS CORRELATION AND CONFLICT IN CONSTITUTIONALITY OF LAWS BETWEEN STATES REQUIRES RESOLUTION BY THE SUPERVISORY POWERS

The Local law 9 declared unconstitutional in the denial of basic rights of possession use and dispose in the seizure of private property by New York Court of Appeals correlates with the law 21-1-203/203(d)(e) allowing for the seizure of nonresident's private properties against Partition in Kind 29-27-117 in Tennessee Statute.

The conflict between New York State and Tennessee lies in the fact that New York City's law is declared unconstitutional in the seizure of propety without just compensation, but Tennessee provides ~~a means~~ for the unconstitutional seizure in advertising nonresident notices.

Appellant's properties were seized without notification when she was very ill, but her whereabouts is common knowledge in the Courts

> ...property law has long protected an owner's expectation that he will be relatively undisturbed at least in the possession of his property. Loretto v Manhatten Corp.458 U.S 436 102 SCt3176

Appellant's properties have been seized without notification in denial of federal protection of equal protection under Tennessee Statute 29-27- 177 and sold in Public Auction (advertise but transferred in private sale).

Appellant's properties have been sold with out any compensation and jury trial in violation of due process rights which constitutes a taking provided in the fifth and fourteenth Amendments.She is denied possessory right use and depose

> ...interferes with... use of property... as to constitute taking Nolan v Caifornia Costal Com'n, 483825 836 17 SCt 3141 3147 97 L Ed 677 (1977).Seawall v New York

Although Appellant's properties are located about thirty(30) miles below GEneral Motor "New Saturn Plant",Spring Hill, Tennessee,the various partieshave not provided any evidence of public need that she should suffer for many in the irreparable damage in the loss of posses use and dispose in possessory rights, and the loss to never be regained in her retirement home.

4. THE DISTRICT COURT DISREGARDS ISSUE TO SET ASIDE FINAL ORDER FROM THE SUPREME COURT ON UNCONSTITUTIONAL SEIZURE OF PROPERTIES WITHOUT ANY COMPENSATION.

The District Court disregards issue to set aside final order from this Supreme Court 89-365 on January 8, 1990, on unconstitutional seizure of properties without any compensation for relief in damages pursuant of Rule 60.02 Federal Rules of Civil Procedure.

Rule 60.02 (b) FRcivP provides for setting aside order on"Fraud(whether intrinsic or extrinsic) for misrepresentation of adverse party.60.02 set aside for fraud upon the Courts.

Robert Boston submitted materials from state case 1974 and final order in which Judge Wiseman ruled in error final state case and res judicata. Robert Boston used these costs and attorney fees for unconstitutional seizure of properties in order August 21, 1987.

Neither Robert Boston's nor his father William Boston, Boston Bates & Holt awarded any compensation,but attorney fees 1974.

Thomas Stack signed order for sale of

possessory interests without any compensation over Appellant's objections to him, and Judge Hamilton. This order was prepared by Boston Bates & Holt, who prepared UNAPPEALABLE JUDGMENT to hearing on December 19, 1983.

Thomas Stack did not enter evaluation of property, bills for restoration, menorandum brief or arrange for a transcript of the proceedings. He evaded all requests for new trial.

The appeal to 1974 was dismissed on unappealable judgment on April 26, 1984, and the appeal has never been heard in this unconstitutional sale. Mr. Stack neglected appeal 1974.

At the partial hearing on May 31, 1988, the hearing was dismissed on directed verdict before the Defendants went on the witness stand and the case never went to the jury.

There are many remaining issues in this unfair and unjust hearing and the denial of due process with all of the evidence before the Court 1:85-0125(88-5717/5763/5794(89-365 S.Ct).

Judge Higgins took over the questions for

all witness in bias for the defense.Wilma Lesnansky's testimony is invalid, and perjury was discussed at the bench.

Thomas Stack took case with bias of previous working relatiuonship in which Wilma Lesnansky trained wife. Thomas Stack's motion shows personal contact with Plaintiff Frank Hulen. Transcript of Proceedings for Stack.

Judge Higgins denied motion to verify invalid transcript of the proceedings with initial tapes. This transcript is biases and was submitted to the Court of Appeals before allowing Appellant to read. The Court of Appeals denied motion to correct biased transcript.Appellant was just out of Vanderbilt Hospital two days from heart seizure on May 31, 1988.Pro se acutely ill on July 29,1983.

The Judge entered the affidavit of the party reading about sale of property for Appellant's interest therein" in November, 1987, (9) days after partial hearing on June 3, on June 22, 1988, was not available at trial.

The of Appeals used res judicata to dismiss this case in docket control on November 28, 1988 No. 88-5717/5763/5794(89-365 Sp.St Rehearing denied January 8, 1990). This complaint to reinstate filed within one month of January 8, on January 12, 1990,and set aside this final order on NEW EVIDENCE of unconstitutional sale pursuant to Rule 60.02(b)FRCIVP, and this case covered with the Exceptions in Doctrine Res Judicata Rule 26 FRcivP under the following circumstances:

> (d) The judgment in the first action was plainly inconsistenct with a fair and equitable implementation of a statutory or constitutional scheme.
>
> (e) For reasons of substantive policy in case involving a CONTINUE AND REOCCURING WRONG, the plaintiff is given the option to sue from time to time.

Dur to negligence of contract to protect right of possession use and dispose in possessary interest,she entered timely and proper appeal 1974, November 19, 1983, but Mr. Stack alleged compensation to take case back to lower Court and she suffers damages in loss of appeal

REASONS WRIT OF MANDAMUS SHOULD ISSUE

This writ of mandamus will be and aid to the Supreme Court's appellate jurisdiction that there are exceptional circumstances in new evidence of intentional discrimination against federally protected rights in disability sex race warranting this Court's discretionary powers provided in the Civil Rights Act of 1964, as amended in Public Law 102-166 passessed November 21, 1991, and adequate relief cannot be had in any other form, or in anyother Court pursuant to 28 U.S.C. 1651(a).

Adequate relief cannot be obtained in jury trial for relief, on new evidence of damages in intentional discrimination against federally protected rights to file complaint for damages, in total loss of United States Department of Agriculture federally alloted burley tobacco program Farm No. 3148, on March 3, 1991, under Agriculture Act of 1938, in United States District Court on the Honorable Thomas Wiseman

enjoin against filing complaints regarding Petitioner's properties in Lawrence County, Tennessee on November 13, 1985.

In a letter to John P. Hehman on April 30, 1986, Judge Wiseman stated,"That order was entered because of Mrs. Polyak's filing against various persons in this Court...she should be severly sanctioned tnerefore."(Court of Appeals).

This petition for writ of mandamus is evidence of intentional discrimination against federally protected rights supressed in 91-5657 in objection to consolidation with 91 5655/5656/5657,and affirmed dismissal in docket control.

Public law 102-166 amends Civil Rights Act of 1964 to extend the right to sue to a person;

> (a) person... shall have the right in every state to make and enforce contracts...to sue...to the full and equal benefit of all laws.

This petition will be an aid to the Supreme Courts discretionary powers to issue writ of Mandamus to the Judges of the District Court in denial of filing complaints and the affirming of this abuse of discretion in Court of Appeals.

In Conclusion, Petitioner prays that writ for a jury trial issue from this Court.

On the 8th day of April, 1992.

Respectfully submitted,

Earlene Polyak
3179 Middlefield Drive
Trenton, Michigan 48183
and/or
4063 Hood Road
Palm Beach Gardens
Florida 33410
(407) 627-3564

Certificate of Service

I certify that a true copy of this pleading has been mailed to Robert Boston 2100 One Commerce Place, nashville, Tennessee 37219, and Samuel Warner 119 South First Street, Pulaski, Tennessee 38478.

Earlene Polyak

I certify that the above information is true and correct to the best of my knowledge and belief.

Earlene polyak

STATE OF FLORIDA
COUNTY OF PALM BEACH

NOTARY PUBLIC
Jeffrey S Tiffany

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXP. MAY
BONDED THRU GENERAL INS.

My comm'n expires: _____

APPENDIX A

In the United States district Court, Columbia Division, Middle District of Tennessee.

Earlene Polyak v Thomas Stack and Henry Henry & Stack 1:85-0125.

Complaint to reopen or reinstate for releif in jury trial for damates on New Evidence of unconstitutional sale of properties denied filing on January 18, 1990. Motion for restraining order inadvertently left out denied on January 22, 1990.

Notice of Appeal to the Supreme Court filed on February 16, 1990. Amended March 13, 1990.Directed verdict June 3, 1988.

Presiding: The Honorable Thomas A. Higgins.

Appeal Sixth Circuit 88-5717/5763/5794.

Appeal to Supreme Court denied jurisdiction, Petition for Rehearing denied January 8, 1990. final Order.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

RE: EARLENE POLYAK 3 13 1990

EARLENE POLYAK

V

No. 1:85-0125
JUDGE HIGGINS

THOMAS STACK AND
HENRY HENRY & STACK

AMENDED
NOTICE OF APPEAL

Plaintiff amends notice of appeals to abuse of discretion in conflict of interest and failure to rescue in denial of filing complaint and demand for relief in reinstating case for jury trial bythe Honorable Thomas A. Higgins on the Honorable Thomas A. Wiseman's injunction against pro se filing complaints regarding her properties) on November 13, 1985 on January 22, 1990 to include Denial of Restraining Order to the Supreme Court of the United States, Rule 18Rules of the Supreme Court.

This Notice of appeal included Application for Restraining order inadvertently left out, but immediately sent to the Distrt

Court, but District Court has issued second order(denying res.Order).

Plaintiff called Supreme Court, U.S. D.C. Florida, and D.C. Nashville ,and submitted on their information that one hundred-five ($105.00) docket fee with notice of appeal to the Supreme Court.

The Clerk at U.S. district Court, disregards notice of appeal to the abuse of discretion and injunction involving basic constitutuionL right and interest in property to the Supreme Court of the United States, pursuant to 42 U.S.C. 1938,1982,1981; 29 U.S.C.1443,5 U.S.C. 504 ENJAFifth Seventh and Fourteenth Amendments.

On the 6th day of March, 1990

Earlene Polyak(407) 627-3564
4063 Hood road, Palm Beach Gardens
Florida 33410

I certify that a true copy of this pleading has been mailed to Sauuel Warner, 119S !st Pulaski, Tennessee 38478.

Signed Earlene Polyak

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

RE:EARLENE POLYAK (FILE STAMPED 1-12-90

EARLENE POLYAK FILED 2 16 90

Plaintiff 1:85-0125

v

THOMAS STACK AND
HENRY HENRY & stack

NOTICE OF APPEAL

Plaintiff gives notice of appeal to the abuse of discretion in conflict of interest and failure to rescue, denial of filing complaint and demand to reopen case for jury trial, and denial to file case on the Honorable Thomas A. Wiseman's order on November 13 1985, in 1:85-0116.Denials filed on january 22, 1990. This notice of appeal is submitted within twenty-four days of filing above denials on January 22, 1990, to the Supreme Court of the United States, to the United States District Court includes restraining order filed on January 23,1990 and one hundred-five($105.00) to the United States District Court.

The Honorable Thomas A. Higgins has made an error in denial of considering NEW EVIDENCE that Supreme Court upholds the denial of Fifth due process, Seventy-Jury trial, and Fourteenth Amendments of the Constitution that seizure, sale, and transfer of Appellant's properties without ANY COMPENSATION is unconstitutional in Seawall et al, v New York City, on November 27, 1989, Case No. 89-388. Thomas Stack signed unconstitutional order for sale on October 19, 1983.

Appellant contends case should b reopened on remaining issues unconstitutional sale disregarded in conflict of interest bias for local parties in prejudice against pro se on May 31, 1988; invalid transcript of proceeding submitted to Court of appeals; Judge denied motion to correct to initial tapes; Wilma Lesnansky's was invalid and Judge disregarded pergury;Frank Hulen did not testify;Affidavit of sale was not entered until June 22,1988, after directed verdict by Judge on June 6,1988

Robert Boston's testimony that his brother did something on case disregarded by Judge on May 31, 1988.

Judge Higgins started shouting at Plaintiff with first witness on subpoena Wilma Lesnansky and continued taking over questions in bias to defense in Transcript of Proceedings with all witnesses.

Judge Higgins stated that Plaintiff did not prove malpractice, but Palintiff did not, and would not try to prove malpractice,as the Honorable Thomas A Wiseman stated in order negligence and malfeasance on December 23 1985 Malpractice belongs to field of medicine,but appears to be borrowed to manipulate dismissal and out of place in federal court. Federal Judge is not restirected to state case laws.

In view of the above, and dismissal of this case on directed verdict,Plaintiff was subjected to unfair and unjust partial hearing without defendant's(Thomas Stack and Joe Henry) testimony in Court, in the denial of due pro-

cess and the deprivation of civil and constitutional laws and property rights.

Plaintiff suffers irreparable damages in loss of right and interest in property without any compensation, and right to never be regained in retirement home. She demands relief for damages on jury trial before unbiased Judge in district Court.

This notice of appeal is taken pursuant to 42 U.S.C. 1983; 1982; 1981; 28 U.S.C. 1443 (1)(2) and 5 U.S.C. 504(Equal Access to Justice).

On the 12th day of February 1980.

Respectfully submitted,

Earlene Polyak(407) 627-3564
4063 Hood road
Palm Beach Gardens,
Florida 33410

Certificate of Service

I certify that a true copy of this pleading has been mailed First Class to Samuel Warner, (Henry Henry & Stack) 119 South First Street, Pulaski, Tennessee 38478.

Earlene Polyak

Note:
Copy received in Supreme Court on February 21, 1990.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

EARLENE POLYAK

FILED 2 12 90

v

No. 1:85-0125
Judge Higgins

THOMAS STACK ET AL.,

ORDER

The Court is in receipt of an Application for Restraining Order Against confirmation of Sale and Transfer of Property Pending Reinstate on New Evicence filed by plaintiff on January 23, 1990, in which he asked the Court to open or reinstate this case.Plaintiff attached a note to application indicating that it had been inadvertently left out of complaint. Plaintiff was referring to complaint filed on January 12, 1990, in which she asked Court to reopen or reinstate this Case.

By Order entered January 22, 1990, Clerk was directed not to file the complaint as a new case and motion to reopen denied.Inasmuch application relief denied injucntive denied.

Signed Thomas A. Higgins

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

RE:EARLENE POLYAK

FILED 1 23 90

EARLENE POLYAK
Plaintiff

No. 1:85-0125

v

THOMAS STACK AND
HENRY HENRY & STACK

APPLICATION FOR RESTRAINING ORDER AGAINST CONFIRMATION OF SALE AND TRANSFER OF PROPERTY PENDING

REINSTATE ON NEW EVIDENCE

Plaintiff applies for restraining order against confirmation of sale and transfer of her properties in Lawrence County, Tennessee, pending the reinstatement of the above case on NEW EVIDENCE in recent upheld ruling in the Supreme Court of the United States that the sale of property without just compensation is unconstitutional seizure on November 27,1989. Thisapplication for stay is taken pursuant to Rule 8 Federal rules of Appellate Procedure. Defendants awarded attorny fees in order signed on October 19, 1983.

On November 27, 1989, the Supreme Court upheld New York Court of Appeals ruling that

New York City's SRO housing unconstitutionally confiscates property and has the effect of seizing property without just compensation Associated Press, Palm Beach Post November 28, 1989.

Neither the order for sale at Public Auction signed by Robert boston on August 21, 1987, nor the order signed by his father, William boston,Boston Bates & Holt, and Thomas Stack, Henry Henry & Stack, awarded ANY COMPEN SATION, for Plaintiff's right and interest in property,loss of liberty to enjoy her investment in restoration and maintenance since 1976.

Plaintiff has restored and maintained the house on her agreed partition provided in Tennessee Statute Partition in Kind 29-27-117, since settlement by agreement initiated by cotenants in 1976.

This restoration is not limited to the removal and storation of new roof,which restored the property in its entirety, painting inside, and outside with special cement sealer elec-

trical wiring, installation of telephone, termite control, insurance and pulling trailer long distance to haul away debris for seven years.

Prior to 1976, Plaintiff and her husband painted ceilings, she took mother to Lawrence burg to buy wall paper of mother's choice. Plaintiff hung wallpaper and employed other persons to help as cotenants did not help pay anything to repair house.

In addition, cotenants transferred and and sold United States Department of Agriculture burley tobacco allotment.

It appears that the cotenants were deceitful and misrepresented their contract to avoid paying additional Plaintiff for investment prior to probate, and the additional taxes the sale of property would have added to their income in 1976, until 1983.

There is no res judicata in this case as the Doctrine of Res Judicata was extended to include remedy at equity in the 19th Century

to a Plaintiff who had available at law(such as deceit in the recession of contract). Rule 60.02 Federal Rules of Civil Procedure provides for setting aside order on misrepresentation in favor of adverse party in this case and companion cases.

These cases cases are covered in the exception of the doctrine of res judicata in Rule 26 FEderal Rules of Civil Procedure where the following circumstances exists:

> (d) the judgment in the first action was plainly inconsistent with a fair and equitable implemenatation of a statutory or constitutional scheme.
>
> (e) For reasons of substantive policy in casein case involving a continuing and reoccuring wrong, the plaintiff i given the option to sue from time to time.

Plaintiff contends that this case and companion cases come under the exceptions Rule 26 Federal Rules of Civil Procedure. this proerty has been sold while she was acutely ill and scheduled for multi-pass surgery in the Cardiac Unit of the University of alabama,and continued to Florida during October and

November 1987.

Plaintiff was not notified of the time of Public Auction, notified of date of auction, was not notified of place of auction, has not been notified of the place where the proceeds held. this property has been sold without ANY COMPENSATION jury trial and without appeal ever being heard.

Plaintiff learned of sale of property by chance from local resident while in Lawrence-burg(See Complaint for copy). This Affidavit was not entered until after partial hearing in this case on June 3, 1988, on June 22, 1988. Plaintiff found this verified in the files of Clerk nad Master in April 1988, but no copy present in the files on October 27,1989. She has notified the Court of all addresses and found self addressed envelopes in the files.

> Notice by mail or other means as certain to ensure actual notice is a minmum constitutional precondition to a proceeding which will adversly affect the liberty or property interests of any party whether unlettered or well versed. New York v New York,N.H.&R Co., 344 U.S. 344 U.S. at 297, 73 S Ct at 301.

Plaintiff applies for restraining order against confirmation and transfer of this unconstitutional taking of properties in all cases.

On the 9th day of January,1990.

Respectfully submitted,

Earlene Polyak
4063 Hood road
Palm Beach Gardens
Florida 33410
(407) 627-3564

Certificate of Service

I certify that a true copy of this pleading has been mailed First Class to Sameul Warner(Thomas Stack Henry Henry & Stack) 119 S. 1st St. Pulaski, Tennessee 36878.

Earlene POlyak

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

EARLENE POLYAK FILED 1 22 90

v No.1:85-0125
Judge Higgins

THOMAS STACK et al.

ORDER

In accordance with the memorandum entered the clerk is directed not to file the complaint submitted by plaintiff in new action, to return the $120.00 filing fee to plaintiff by certified mail, to file stamp the complaint with date of receipt, docket the complaint and place it in the case file of the above styled case. To the extent that plaintiff seeks to reopen the above styled case, such request is denied.

It is so ordered.

Signed Thomas a. Higgins

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

EARLENE POLYAK

FILED 1 22 90

No. 1:85-0125

v

Judge Higgins

THOMAS STACK et al.

MEMORANDUM

Plaintiff again attempts to relitigate (sic)the issues that have already been adjudicated in this Court. In her latest effort, she submits what appears to be a new complaint with accompanying civil cover sheet and filing fee, but styles it with the case name and mumber listed above. In addition, she attempts to incorporate by reference allegations contained in the complaint filed in the above styled case.

Plaintiff believes that a recent United State Supreme Court ruling provides her with justification for reopening this case. According to the newspaper article that Plaintiff attached, the Supreme Court upheld a New

York court of appeals decision that had declared unconstitutional a law prohibiting converson or demolition of a single-room occupancy housing.

By describing that case as new evidence plaintiff reveals her ingenious ability to grasp at irrelevant circumstances and developments to analogize to her own case. the Supreme Court Case to which she refers is in fact completely opposite her litigation.

The above case was closed in 1988(sic appealed to S Ct 89-365)after Court granted directed verdict. If plaintiff's complaint is to be construed as a request to reopen this case, it is hereby denied.

If, plaintiff hopes to file a separate new action her case is covered by the order on November 13, 1985, in Earlene Polyak v Jim Hamilton et al.,1:85-0116. in which the Court enjoined her from filing any further action in this court regarding the partition sale of property in Lawrence County, without express

permission of this Court. Inasmuch as Plaintiff latest complaint is at least her 15th attempt relitigate(sic) the previously adjudicated issues, the Clerk is directed not to file the complaint as a new action. The Clerk is further directed to return the filing fee to plaintiff by certified mail.

Because it is not clear whether plaintiff intends to file a new complaint or a request to reopen the the above styled case, the Clerk is directed to file stamp with date of receipt (January 12, 1990) and docket Complaint and Jury Trial Demand to open or Reinstate on New Evidence and set aside Order in the above styled case and to place the documents submitted by plaintiff in the case file for the above styled case.

An appropriate order will be entered.

Signed Thomas A. Higgins.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

RE: EARLENE POLYAK

EARLENE POLYAK

FILED APRIL 4 1990

v

1:85-0125
JUDGE HIGGINS

THOMAS STACK AND
HENRY HENRY & STACK

MOTION TO AMEND ORDER

Plaintiff moves to amend order issued on March 27, 1990, to show that Plaintiff called long-distance from florida t ascertain the filing fee on New Rule 18, Rules of the Supreme Court, and was informed that the fee is one hundred ($105.00) in this United States District CourtColumbia division Middle District of Tennessee.

this is the third time Plaintiff's notice of appeal to the Supreme Court of the United States has been sent to the United States Court of Appeals, sixth Circuit. She tried to appeal remand in 1:87-0075(1:84-0084 & 1:84-0083) Frank Hulen and Wilma Lesnansky v Earlene Polyak(all cases styled the same D.C)removed complaint and

Counter-claim order on September 29,1987,and October 5, 1987, but entered in the Court of Appeals. Again this notice of appeals entered into the Court of appeals second time(No.88-5717/5763/5794)(Supreme Court No.89-365 Appeal denied lack Jurisdiction:Petition Rehear Cert. denied January 8, 1990).

this notice of appeal is Regarding Earlene Polyak to denial of filing complaint and demand for relief for damages in jury trial on injunction against pro se filing complaints regarding her properties in the United States District Court.

On the 30th day of March,1990.

Earlene Polyak(407-627-3564
4063 Hood Road Palm Beach Gardens
Florida 33410

I certify that an exact copy of this pleading has been mailed to Sanuel Warner,119 S 1st.Pulaski, Tennessee 38478.

Earlene Polyak

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

EARLENE POLYAK

V Plaintiff

THOMAS STACK ET AL.,

Defendants

FILED MARCH 27 1990

No. 1:85-0125

JUDGE HIGGINS

ORDER

Plaintiff has filed a motion to correct appealand return charges in which she seeks return of filing fee for an appeal in this case.

After receiving the notice of appeal, filed February 16, 1990, document entry No. 100) and the amended notice of appeal, filed March 18, 1990(document entry 101), it appears the plaintiff intended to file an appeal to the Supreme Court of the United States, rather than to the Court of Appeals of the Sixth Circuit. Due to an insdvertent, clerical mistake, the Clerk of this district Courttreated these notices of appeals to the Court of appeals.

With the Notice of Appeal, Plaintiff tendered a check for $105.00 the normal filing fee collected for the to the Court of Appeals.

The clerk of this court is hereby directed to return the amount of $105.00. Insofar as appellate fees required by the U.S. supreme Court are to be paid directly to the Clerk of that Court, the Clerk of this Court shall not be responsible for collection of any appellete fees.

When the record in this case is returned to this Court from the Court of Appeals, the Clerk shall transmit the original Notice of Appeal to the United States Supreme Court.

signed thomas A. Higgins

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

EARLENE POLYAK FILED JUN 17 1988

B No. 1:85-0125
Judge Higgins

THOMAS STACK,et al.,

ORDER

The plaintiff's motion(filed June 13, 1988) for a New Trial is denied.

It is so ordered.

Thomas A. Higgins

6-17-88

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

EARLENE POLYAK filed 6-22-88

V

No. 1:85-0125
Judge Higgins

THOMAS STACK AND
HENRY HENRY & STACK

ORDER

The Court is in receipt of an Affidavit dated June 16, 1988, from Ms. Mary Mitchell.

The Clerk is directed to file this affidavit as a part of the record.

It is so Ordered.

Signed Thomas A Higgins

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

EARLENE POLYAK No. 1:85-0125

v

THOMAS STACK AND FILED: June 21, 1988
HENRY HENRY & STACK

AFFIDAVIT

To whom it may concern;

My name is Mary Mitchell. I live at R #3 Box 63B Lawrenceburg, Tennessee 38464.

On or about Sept. thru Nov. of 1987, I was reading my newspaper the Laurence County Advocate, when a familiar name caught my eye. The name of that person was Earlene Polyak. Realizing I had met her on about 3 occasions in the past, I read more, out of curosity. The contents of the article was non-resident of some sort. The content of the article revealed the intent to sale of some property that sounded familiar to me. In some correspondence in which I last received from Earlene Polyak some years ago. She had revealed to me that she own a mobile home situated on some property

home in Lawrence County, TN. Upon meeting her again some 6 months after I had read the article, I casually mentioned it to her, at this time, she informed that she knew nothing of this.

This is all the knowledge I have of this situation.

Signed Mary Mitchell

COUNTY OF LAWRENCE
STATE OF TENNESSEE

Sworn and subscribed before me this 18th day of June, 1988.

My commission expires: August 8, 1988

Signed Mabel Evelyn Hedgepath, Notary Public

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

EARLENE POLYAK
Plaintiff

FILED NOV 13 1985

v

No. 1:85-0116
Judge Wiseman

JIM HAMILTON, severaly and
in Judicial Capacity, as Judge,
AND THE CIRCUIT COURT OF
LAWRENCE COUNTY

ORDER

For reasons stated in the Memorandum contemporanously filed herewith, the application for extraordinary relief is denied and the case is dismissed on the Court's own motion. No process shall issue but a copy of this memorandum and order will be mailed to defendants.

Plaintiff Polyak is expressly enjoined from filing any further actions in this Court regarding partition sale of property in Lawrence County without the express permission of this Court.

Signed Thomas A. Wiseman Jr.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

EARLENE POLYAK

V

FILED DEC 3 1985

THOMAS STACK

ORDER

Although imporperly styled Petition for this case appears to be an action for attorney negligence. Diversity exists, and jurisdicational amount is alleged. this pleading has been indulged with every reasonable presumption because of plaintiff's pro se status. Although it contains many of the same allegations and requests for relief made in plaintiff's numerous other frivolous filings in this Court, this petition presents allegations of attorney negligence or malfeasance which allow it survive initial review. It is filed within one year after the order of nonsuit was entered by Judge Hamilton(order entered by the Honorable James L Weatherford) of the similar suit in Lawrence County. the injunction is modified.

Signed Thomas A. Wiseman Jr.

APPENDIX B
SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON,D.C. 20543

Ms. Earlene Polyak
4063 Hood road
Palm Beach Gardens, florida 33410

January 8, 1990

Re:Earlene Polyak
v Thomas Stack and Henry Henry & Stack

Dear Ms. Polyak

The Court today entered the following order in the above case:

The petition for rehearing is denied.

Very Truly yours,

Signed
Jospeh spaniol Jr.,clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

RE: EARLENE POLYAK

EARLENE POLYAK

v

FILED MAR 20 1990

Dis. No. 1:85 0125
JUDGE HIGGINS

THOMAS STACK AND
HENRY HENRY & STACK

MOTION TO CORRECT CLERICAL ERROR
WITH WITHDRAW AND RETURN OF TIMELY APPEAL
TO THE SUPREME COURT OF THE UNITED STATE
FROM UNITED STATES DISTRICT COURT

Appellant moves to correct Clerical error with withdraw of timely appeal to the Supreme Court February 16, 1990, entered in this court in this Court pursuant to Rule 60.01 FRcivP.

Appeal to the Supreme Court isdenial of filing complaint for relief i n damages on New Evidence with restraining order timely pusrsuant to Rule 18, rules of the Supreme Court.as usuas disregarded a ciopy of motion to correct record sent to Court of Appeals.

Ms. Yvonne Henderson, Case Supervision, threatensdismissal and refuses to correct appeal.Ms. Juliet Griffin, Clerk and Ms.

Billy Joe hastings D.C. do not take long dis tance telephone calls, and Larohenda Howard refused to correct mistake.

Appellant is obligated to make additipnal from florida and excessiveand burden on limited burden with heart problem, but Ms. Henderson states that she reads every word Appellant writes, but clerical error.

Mr. Leonard Green Clerk and Ms Janice Yates Chief Deputy Clerk refuse emergency telephone calls.

Appellant has No Forum in state Courts and obligated to seek relief for unconstitutional taking" of her properties for sale at Public Auction.

On the 21st of March, 1990.

Earlene Polyak, 4063 Hood road Palm Bch Florida 33410 (404) 627-3564

I certify that a true copy of this pleading has been mailed to Samuel Warner, 11st St Pulaski, Tennessee 38478.

Earlene Polyak

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EARLENE POLYAK

Plaintiff-Appellant

FILED MAR 28 1989

v

ORDER

THOMAS STACK AND
HENRY HENRY & STACK

Defendant-Appellees

BEFORE: MARTIN AND MELBURN, Circuit Judges and HOLSCHUH, District Judge.

This case has been referred to a panel of the Court pursuant to Rule 9(a) Rules of the Sixth Circuit. Upon examination of the briefs and record, this panel unanimously agrees that oral argument is not needed. Fed. R. 34(a).

Earlene Polyak seeks review of the dis-rtict court's judgment granting a directed verdict for the defendant's in Polyak's div-ersity suit for legal malpractice filed against her former attorney and his law firm. In es-sence, Polyak alleged that Stack's malpractice in the handling of her defense to a Tennessee land partition suit resulted in an adverse order that the real estate be sold, thereby

depriving her of the use of the property. Polyak also filed a motion seeking rescual of the federal trial judge, which was denied.

The matter was heard before a jury during a four-day trial, in which Polyak proceeded pro se. At the close of Polyak's case, the defendant's motion for a directed verdict was grantedby the district court. The court applied the law of Tennessee pursuant to Erie Railroad C. v Thompkins, 304 U.S. 64(1938), and concluded that Polyak had failed to prove the necessary elememts of legal malpractice claim.

Polyak sought timely reconsideration of the judgment which was denied. She appealed the final judgment of the district court,and filed two subsequent notices of appeal seeking review of the denial of the motion to reconsider. the appeals are consolidated for the purpose of appellate review.

On appeal, Polyak argues that she proved her case before the jury and that the directed

verdict deprived her of the right of rebuttal. Polyak claims that she was prejudiced when the trial judge shouted at her in front of the jury and that the judge erred in failing to rescue himself from her trial. She further claims that her attorney committed malpractice by permitting her to testify in a state court wearing sunglasse the issues are fully briefed. Polyak has also filed motions seek ing stay of the sale of property and seeking to verify and supplement the record on appeal,as well as a Petition for Rehehoar of the verification of the record.

Upon consideration, we affirm the judgment of the district court . Under Tennessee law relating to claim of legal malpractice, a lawyers standard of conduct to be measured against the degree of care, skill and diligence which is commonly possesed and exercised by attorney practicing in the same jurisdiction. See Spalding v Davis, 674 S.W. 2d 710 714(Tenn.1984 Cleckner v Dale, 719 S.W. 2d 535, 540(Tenn.

App. 1986). the question of whether a lawyer's conduct departed from the appreciable standard of care is to proved by expert testimony. Cleckner, 719 S.W. 2d at 541.

Review of the transcript reveals that, although Polyak called three attorneys as witnesses in her case-in- chief, she utterly failed to elicit the standard of conduct owed by attorneys practicing in the same jurisdiction. Moreover, Polyak failed to prove that Stack departed from the standard of care owed by an attorney. Accordingly, the district court's entry of a directed verdict in favor of the defendants and the dismissal of Polyak's suit with prejudice is affirmed.

We further hold that the district court did not err in failing to grant rescual motion filed by Polyak, since the motion asserted predicated soly on the judge's prior judicial conduct. See Easley v University of Michigan, 853 F.2d 1351,1355(6th Cir. 1988).

The motion and amended motion filed in

this court seeking to stay the sale of Tennessee property is not proper. Plaintiff's claim in this suit is one of legal malpractice and the defendants have no interest in the property which is subject of the state court judgment.

Further, Polyak's motions seeking to verify and supplement the record and the Petition for Rehear are not well taken.

Accordingly, the motions for stay, the motions to verify and supplement the record on appeal and the Petition for Rehear are denied. The judgment of the district court dismissing Polyak's suit with prejudice is hereby affirmed pursuant to Rule 9(a)(5), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

Signed Leonard Green, Clerk

MANDATE ISSUED:June 30, 1989

Appeal to Supreme Court 89-305

No. 86-5199

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EARLENE POLYAK

FILED MAR 3 1987

Plaintiff-Appellant

v

THOMAS STACK AND
HENRY HENRY & Stack

Defendant-Appellees

Before: GUY Circuit Judge; EDWARDS, senior Judge and EDGAR District Judge.

The Court having received a petition for rehearing en banc, and petition having been circulated not only to the original panel but also to all other active Judges of this court, and no judge of this court having requested a vote on the suggested rehearing enbanc, the petition for rehearing has been referred to the original panel.

the panel reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case, Accorcingly petition is denied.

ENTERED BY ORDER OF THE COURT

No. 86-5199
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EARLENE POLYAK

V

FILED JAN 5 1987

THOMAS STACK AND
HENRY HENRY & STACK

BEFORE: GUY, Circuit Judge; Edwards, Senior Judge and EDGAR, District Judge.

The plaintiff appeals the order denying her motion for a "restraining order" in this diversity action for legal malpractice. The defendants now move for dismissal of the appeal on grounds the oreer is nonappealable. that motion was referred to this panel pursuant to Rule 9(a), Rules of the Circuit Court.

This action arises from Tennessee state case proceedings which resulted in an order for the partition sale of farm property jointly owned by plaintiff and her two siblings. In her pro se complaint the plaintiff claimed that adverse decision in those proceedings resulted in part from negligent performance of retained counsel -the defendants herein. In addition to

damages however, she sought injunctive relief prohibiting the sale of the farm property. To that end, she submitted a proposed "restraing order" enjoining anyone associated with or employed by the defendants from seizure, sale by any means including "Public Auction" of the property. The district court sumarily denied that proposed order by notation.

the defendants argue that the district court's order was one of denying a temporary restraining order,which except in extraordinary circumstances cannot be appealed either 28 uSC 1291 Or 1292(a)(1). See generally, Petraco -Valley Oil and Refining Co., v U.S. Department of Energy,633 F 2d 184 199(T.EC.C.A.) the district court, construed the order as a motion for either temporary restraining order or a preliminary injunction. Given Pro Se Status of the pendency action, we conclude the district court's order as a preliminary injunction. This court has jurisisdiction to review to review that order under 28 USC1292(a. 1)

Upon examination of the record and briefs this panel agrees unaminously that oral argument is not needed. Rule 34(a) Federal rules of Appellate Procedure,because plaintiff's claim is for malpractice and defendants have not interestin the property which is the object of the state court judgment, the district court did not abuse discreationin summarily denying the proposed injunctive relief.

It is ordered that themotion to dismiss be and it is hereby denied.

It is ordered further that district court's denial of preliminary injunction is hereby affirmed Rule 9(d)(2).

Entered by order of the clerk

Signed John P. Hehman

APPENDIX C

CHANCERY COURT OF LAWRENCE COUNTY, TENNESSEE

FRANK HULEN ET AL
Plaintiff

FILED DEC 19 1983

v

No. 1974

EARLENE POLYAK
Defendant

JUDGMENT

This cause came on to be heard on this the 19 day of December 19, 1983, before the Honorable Jim T. Hamilton, Judge upon the motion this day filed by Defendant, personaly on her own behalf, state and argumentof the Defendant personally from all which the Court finds there to be no merit, and said motion is here and now overruled.

This 19th day of December, 1983.

Signed Jim T. Hamilton

CERTIFICATE OF SRVICE

The undersigned certifiesthat a true copy of this pleading addressed to said counsel at his office .

Signed Charles Holt
Boston Bates & Holt

State case dismissed on above UNAPPEALABLE JUDGMENT on April 24, 1984, NO FINAL ORDER.

CHANCERY COURT OF LAWRENCE COUNTY, TENNESSEE

FRANK HULEN AND
WILMA LESNANSKY
Plaintiffs

No.

Civil Action No. 1974

v

EARLENE POLYAK
Defendant

ORDER

Upon motion of Plaintiffs to sell that certain parcel of land formerly at issue in this lawsuit, said sale having previously been ordered by this Court and said Court having been affirmed through all stages of the Appellate process, it is hereby ordered as follows:

1. Col. Eulan Hooper is hereby authorized and directed to advertise, on behalf of the parties herein, the sale of land in Exhibit 1 hereto under the following terms and conditions of this order:

Mr. Hooper will advertise said sale in a newspaper of general circulation in Lawrence County Advocate said sale to be conducted at

public auction pursuant to this order on a Saturday at 10:00 a.m., said date to be determined by Mr. Hooper and set out in the advertisements, and not to be less than 21 days following the entry of this order. Said advertisement shall be run in no less that three separate issues of said newspaper prior to the date of such sale. Said sale shall be conducted in a manner consistent with normal and usual practice for auction sales held in Lawrence County, Tennessee and the land shall be sold to the highest best bidder for case, 10% of payment to be delivered on the date of sale and held by Mr. Hooper in trust for deposit into the registry of the Court on the following Monday. The remainder shall be due by 12:00 noon on aforesaid "following Monday payable to the Lawrence County Clerk and Master's office, who shall in turn deposit into the Court's registry.

2. Upon deposit of said funds into registry of this Court, the Clerk and Master is directed and authorized to prepare an

appropriate deed conveying title to the property as ordered herein to the purchaser of said land at auction, or his or her designee or assign. Said deed shall divest all parties hereto of all right, title and interest in and to said land pursuant to this and previous orders of this Court.

3. Upon delivery of the above-referenced deed, and payment of the purchase price for the land into the registry of this Court, the Clerk and Master shall divide the net proceeds equally among the parties hereto, after having paid Eulan Hooper a fee for his services in connection with said auction as ordered herein in the amount of 6% of the gross amount received at said auction, plus reimbursements for any reasonable costs incurred in conducting said auction sale. In addition, the Clerk and Master shall be paid a fee for her services as set out herein in the amount of $250.00, and shall pay from defendant's portion of the proceeds, all Court

costs incurred since this case initially filed. Thereafter, the Clerk and Master shall pay to parties hereto the net amount due each party pursuant to the Court's partition, subject, however, to payment by the Clerk and Master all debts of all creditors of record of any party who have a lein against any interest in said land as a result of leins against party's interest therein. Such leins of record shall attach to the proceeds of the land the same as same attached to the actual land.

4. All other matters are reserved pending further of the Court.

So ordered this ____ day of September, 1987.

Hon. Jim T. Hamilton, Circuit

APPROVED FOR ENTRY:

Signed Robert Boston
Attorney for Plaintiffs

Lein placed by Robert Boston on December 12, 1984 NOTE BOOK 19, p. 270, Lein Book 7, pp. 497 499 by Genova Frisbee. This lein for

CHANCERY COURT OF LAWRENCE COUNTY, TENNESSEE

FRANK HULEN, ET AL. FILLED OCT 19 1983
Plaintiffs

v CIVIL ACTION NO. 1974

EARLENE POLYAK
Defendant

ORDER

This cause came on to be heard this the 29th day of July 1983, before the Honorable Jim T. Hamilton, Judge, Part II of the Circuit and Chancery Court in Lawrence County, Tennessee. While holding Chancery Court for Lawrence County, Tennessee, upon complaint hereto filed in this cause, the Answer thereto, the testimony of witness in open Court, and the entire record in this cause, whereas at the conclusion of which defendant's attorneys were granted the privilege of presenting a brief to the Court within a reasonable time, after the conclusion of which the Court found in memo dated August 11, 1983, the following:

1. That the property in question consists of approximately 40 acres, which belonged to the partion mother.

2. That the property cannot be partitioned in kind as there are three distinctly different types of property within the 40 acres. One portion of the property includes the home place, well and barn, another portion contains woods and is a low lying wet area, and the remaining portion consists of level flat land which is suitable for raising crops.

3. The Court finds there is no way to divide this land equally between these heirs, without selling said property and dividing the proceeds.

4. The proceeds of this sale after payment of all expenses incident to sale, including attorney fees will be divided equally between the heirs, except that the cost of this case shall be deducted from the defendant's share of said proceeds.

5. This sale shall be conducted by Eulan Hooper unless the parties agree on another real estate company.

All of which is therefore, ORDERED AND DECREED by the Court.

This the 19th day of October, 1983.

Signed Jim T. Hamilton
Jim T. Hamilton, Circuit

APPROVED FOR ENTRY:
BOSTSON BATES & HOLT

Signed William Boston
Attorney for PLAINTIFF
Signed Thomas Stack

Case Nos. 91-8517/18/19
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

(91-8517 and 91-8518
EARLENE POLYAK FILED MAY 22 1991
Petitioner
v
FRANK HULEN AND WILMA LESNANSKY
(91-8519)
EARLENE POLYAK
Petitioner ORDER
v
THOMAS STACK AND HENRY HENRY & STACK
Respondents

BEFORE: KEITH AND BOGGS, Circuit judges, and
Wellford Senior Circuit Judge.

The petitioner a pro selitigant, has filed three applications for leave to appeal three orders of the district court entered March 21, 1991. Those orders denied her motions to set aside prior judgments in the three cases and and to permit her to amend the complaints ther in by adding a claim based on newly discovered evidence.

The rules do not provide for applications for leave to appeal under these circumstances. The applications, however, contain the elements

for notices of appeal as set forth in Rule 3(c) Fed.R.App.P. See United States v Christoph, 904 F.2d 1036(6th Cir 1990 Cert Denied 111S.Ct. 1991), and we construe them notices of appeals erroneously filed in this court. See Bertoli 812 F.2d 136 138(3rd Cir. 1987)(application for leave to appeal under 28 USC §1292(b). As such, they should be entered on the district court docket sheets as notices of appeals filed as of the date they were received by this court.

It therefore is ordered that the clerk of this Court note on applications the date they were received and transmit them to the district court to be deemed filed threrin as notices of appeals on the dates so noted. Rule 4(a)(1) Fed R. The fees paid by the petitioner for filing the applications shall be applied to the fees for such appeals.

ENTERED BY ORDER OF THE COURT
Signed Leonard Green, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FRANK HULEN AND WILMA LESNANSKY
Plaintiff/Appellees,
(91-5655

FILED JAN 13 1992

EARLENE POLYAK,
Plaintiff/Appellant
(91-5656)(91-5657)

v

EARLNE POLYAK
Defendant/Appellant
(91-5655

ORDER

FRANK HULEN AND WILMA LESNANSKY
Defendants/Appellees
(91-5656

THOMAS STACK AND HENRY HENRY & STACK
Defendant/Appellees
(91-5657

BEFORE BOGGS AND NORRIS, Circuit Judges, and TIMBERS, Senior Circuit Judge.

Earlene Polyak petitions for rehearing of this court's order, entered November 22, 1991, affirming the district court's judgment which the district clerk not to file the complaints which she had submitted in these cases.

After careful consideration of the petition for rehearing, the panel concludes that it did not overlook or misapprehend any point of law or fact in its order, entered November 22,1991. Fed. R. App. P. 40(a).

Accordingly, it is ordered that the petition for rehearing be and hereby is denied.

ENTERED BY ORDER OF THE COURT

Signed Leonard Green,Clerk

Nos. 91-5655/5656/5657

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FRANK HULEN AND WILMA LESNANSKY
Plaintiffs/Appellees
(91-5655 FILED NOV 15 1991

EARLENE POLYAK
Plaintiff/Appellant
(91-5656)(91-5657

v

EARLENE POLYAK ORDER
Defendant/appellant
(91-5655)

FRANK HULEN AND WILMA LESNANSKY
Defendants/Appellees
991-5656

THOMAS STACK and HENRY &
STACK
Defendants/Appellees
(91-5657)

BEFORE: BOGGS AND NOTTIS, Circuit judges. and
TIMBERS, Senior Circuit judge

Earlene Polyak, a pro se resident of Michigan and Florida, appeals from the district court judgments(sic order) directing the Clerk of the district court not to file complaints which she had submitted. these cases have been referred to a panel of the court pursuant to Rule 9(a), Rules of the Sixth Circuit. Upon examination, the panel unanimously agrees that oral argument is not necessary. Fed. R.App.34(a

Polyak's complaints are a part of her courtaction which resulted in the partition sale of land that she and her siblings,Hulen and Lesnansky, had inherited as tenants in common. Polyak seeks to overturn the Tennessee court decision, which has become final under state law, by instituting numerous federal actions against parties to the state litigation and their representatives. Polyak seeks to challenge the Tennessee decision on grounds of newly discovered evidence. polyak asserts that she has new evidence:(1) that a burley tobacco allotment for the land in question was transferred without her consent; and(2) that she was forced to pursue her case in state court and in the federal courts while she was in ill health.

The district court denied Polyak permission to file complaints based on its earleir order enjoining Polyak from filing further litigation regarding state court action without express permission of the Court. Polyak has

filed timely appeal.

We affirm the district court's judgment (sic order) for the reasons stated in the three memoranda orders issued on March 21,1991.

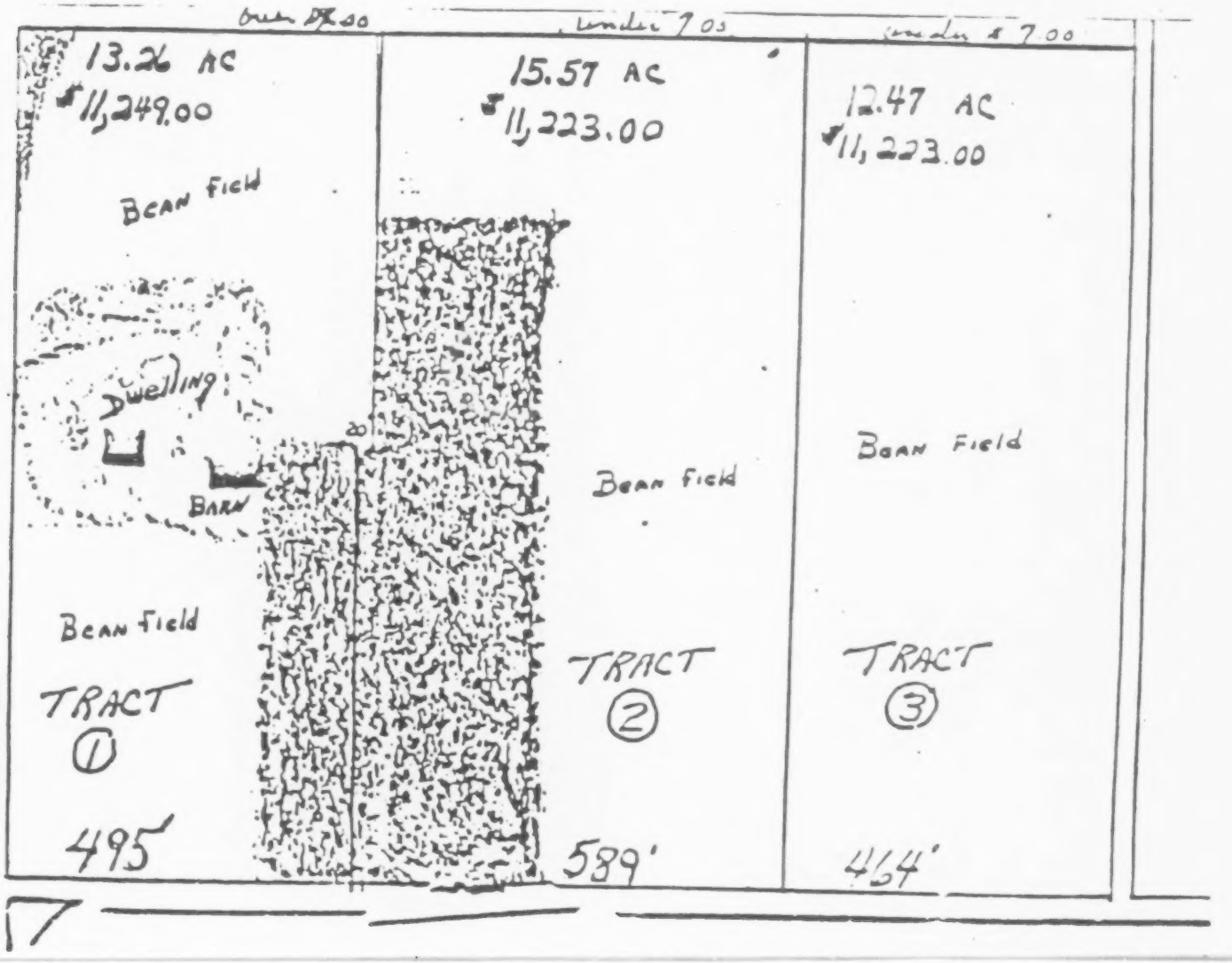
This court has previously approved the district court's practice of requiring prolifi litigators to obtain leave of the court before further complaints will be accepted for filing. See Filipas v Lemons 835 F 2d,1145 1146(6th Cir 1987 order. The district court has prperly concluded that the doctrine of res judicata bars Polyak's complaints.Despite her claims of newly discovered evidence, her complaints are nothing more than a attempt to relitigate previous state court proceedings that were terminated in a final state court action adverse to Polyak's interests. Affording the res judicata effect to Tennessee state court judment(sic no final order) as would the Tennesse state court judgment(sic no final order)as would the Tennessee court Migra v Warren City School Dist Bd of Edux 465 U.S.75(1984):Whit-

field v City of Knoxville.756 F 2d 455,458-60 (6th Cir 1985), we conclude that the doctrine of res judicata, as applied in Tennessee law, bars the claim which Polyak sought to raise her complaints.

We conclude this case is appropriate for application of sanctions against polyak pursuant to Fed. R. P.38 See martin v Commissioner of Internal Revenue 756 F 2d 38, 40-41 6th Cir) These cases are Polyak's forty-second, forty-fourth appeals(including prior mandamus petitions)concerning this property dispute. This courthas assessed sanctions against Polyak in cases similiar to this case. Due to the frivolous nature of this appeal, we impose double costs and attorney fees against Polyak pursuant to Fed. R. App. P. 38.

The district court's judgments(sic order) are hereby affirmed pursuabt to Rule 9(b)(3). An itemized and verified bill for costs and fees may be filed with the Clerk.

ENTERED BY ORDER OF THE COURT
Signed Leonard Green, Clerk


13.26 AC
$11,249.00
15.57 AC
$11,223.00
12.47 AC
$11,223.00
Bean Field
Dwelling
Barn
Bean Field
Bean Field
Bean Field
TRACT
①
TRACT
②
TRACT
③
495
589'
464'
7

 Ex.1.

SUPREME COURT OF THE UNITED STATES

EARLENE POLYAK

V : No. 89-365

THOMAS STACK AND
HENRY HENRY & STACK

AFFIDAVIT

Affiant Earlene Polyak deposes and says:

That Affiant went to Lawrence County Courthouse and reviewed files in Chancery 1974, and Circuit 10647, and Nonsuits 10611, 10612 while in the area for heart test on October 27, 1989.

That materials for complaint and counter-claim and demand for a jury trial and removal of Robert Boston's order to sell property on August 21,1987, District Court No. 1:87-0075, were found in file Circuit No. 10647.

That files 10611 and 10612 checked out to Boston bates & Holt in June 1987, were return ed to the Court for Affiant. And that note on folder that 10612 that Judge Hamilton said to hold order.And that orders present denying

Affiant's objection to sale Chancery 1974, signed by Jim Hamilton,Circuit Judge, signed October 9, 1984.

That Clerk & Master continued to deny two five hundred ($1000.00) checks for appeal bond, but Affiant found checks in envelope in back of file 1974.And that Clerk & Master alleged note in front of file about 42½ acres was about taxes.

That previous check with tax accessor that Frank Hulen paid taxes with check on 1974, on October 3, 1989.

That Affiant observed plowed line subject of dispute to add to Frank Hulen's adjoining property at the farm on October 27, 1989.

That the copy of Robert Boston's order to sell on August 21, 1987, previously identified in file in April 1988,after Affiant first learned about advertied sale April 1, 1988, was not in file Chancery 1974.

That order of remand by Judge Higgins on October 5, 1989, was not in either Chancery or

Circuit Court files.

That Affiant called back to Circuit and Chancery Court to verify if another file, but both offices denied additional file, but Affiant has copies of these materials from U.S. District Court.

That Affiant overheard Judge Higgins state on May 31, 1988, I am a lawyer, I think in terms of one-third. And that Affiant asked Judge Higgins to rescue, after Judge asked Bruce Peden and Thomas Stack to stand and introduced them to the jury as lawyers.

That Affiant stated that she had taken a lot of abuse on June 3, 1988. And that Judge Higgins stated, I resent that Mrs. Polyak.

That Affiant has found many mistakes in Transcript of Proceedings. And Wilma Lesnansky did not tell truth and perjury discussed at bench.

On the 21th day of November 1989.

SSTATE OF FLORIDA
PALM BEACH COUNTY

Earlene Polyak

NOTARY PUBLIC

My comm: wexpires:

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXP. MAR 31,1990
BONDED THRU GENERAL INS. UND.